

## § 205.57

## 40 CFR Ch. I (7–1–00 Edition)

conduct or monitor testing as required by this part.

[41 FR 15544, Apr. 13, 1976, as amended at 42 FR 61456, 61459, Dec. 5, 1977; 47 FR 57715, Dec. 28, 1982]

### § 205.57 Selective enforcement auditing requirements.

#### § 205.57–1 Test request.

(a) The Administrator will request all testing under § 205.57 by means of a test request addressed to the manufacturer.

(1) Except as provided in paragraphs (a) (2) and (3) of this section, the Administrator will not issue to a manufacturer during any model year more test requests than a number determined by dividing the total number of vehicles subject to this regulation which the manufacturer projects he will produce during that model year by 25,000 and rounding to the next higher whole number: Except, that the Administrator may issue one additional test request beyond the annual limit to any manufacturer for each time a batch sequence for any category, configuration or subgroup thereof of such manufacturer's production is rejected in accordance with § 205.57–7.

(2) Any test request issued against a category, configuration or subgroup thereof which the Administrator has reason to believe does not meet the standards specified in § 205.52 will not be counted against the annual limit on test requests described in paragraph (a)(1) of this section. Any such request shall include a statement of the Administrator's reason for such belief.

(3) Any test request under which testing is not completed will not be counted against the annual limit on test requests described in paragraph (a)(1) of this section.

(b) The test request will be signed by the Assistant Administrator for Enforcement or his designee. The test request will be delivered by an EPA Enforcement Officer to the plant manager or other responsible official as designated by the manufacturer.

(c) The test request will specify the vehicle category, configuration or subgroup thereof selected for testing, the batch from which sampling is to begin, the batch size, the manufacturer's

plant or storage facility from which the vehicles must be selected, the time at which a vehicle must be selected. The test request will also provide for situations in which the selected configuration or category is unavailable for testing. The test request may include an alternative category or configuration selected for testing in the event that vehicles of the first specified category or configuration are not available for testing because the vehicles are not being manufactured at the specified plant and/or are not being manufactured during the specified time or not being stored at the specified plant or storage facility.

(d) Any manufacturer shall, upon receipt of the test request, select and test a batch sample of vehicles from two consecutively produced batches of the vehicle category or configurations specified in the test request in accordance with these regulations and the conditions specified in the test request.

(e)(1) Any testing conducted by the manufacturer pursuant to a test request shall be initiated within such period as is specified within the test request: Except, that such initiation may be delayed for increments of 24 hours or one business day where ambient test site weather conditions, or other conditions beyond the control of the manufacturer, in any 24-hour period do not permit testing: *Provided*, That these conditions for that period are recorded.

(2) The manufacturer shall complete emission testing on a minimum of five vehicles per day unless otherwise provided for by the Administrator or unless ambient test site conditions only permit the testing of a lesser number: *Provided*, that ambient test site weather conditions for that period are recorded.

(3) The manufacturer will be allowed 24 hours to ship vehicles from a batch sample from the assembly plant to the testing facility if the facility is not located at the plant or in close proximity to the plant: Except, that the Administrator may approve more time based upon a request by the manufacturer accompanied by a satisfactory justification.

(f) The Administrator may issue an order to the manufacturer to cease to distribute into commerce vehicles of a

specified category or configuration being manufactured at a particular facility if:

(1) The manufacturer refuses to comply with the provisions of a test request issued by the Administrator pursuant to this section; or

(2) The manufacturer refuses to comply with any of the requirements of this section.

(g) A cease-to-distribute order shall not be issued under paragraph (f) of this section if such refusal is caused by conditions and circumstances outside the control of the manufacturer which renders it impossible to comply with the provisions of a test request or any other requirements of this section. Such conditions and circumstances shall include, but are not limited to, any uncontrollable factors which result in the temporary unavailability of equipment and personnel needed to conduct the required tests, such as equipment break-down or failure or illness of personnel, but shall not include failure of the manufacturer to adequately plan for and provide the equipment and personnel needed to conduct the tests. The manufacturer will bear the burden of establishing the presence of the conditions and circumstances required by this paragraph.

(h) Any such order shall be issued only after a notice and opportunity for a hearing.

[41 FR 15544, Apr. 13, 1976, as amended at 42 FR 61459, Dec. 5, 1977; 43 FR 12326, Mar. 24, 1978]

**§ 205.57-2 Test vehicle sample selection.**

(a) Vehicles comprising the batch sample which are required to be tested pursuant to a test request in accordance with this subpart will be selected in the manner specified in the test request from a batch of vehicles of the category or configuration specified in the test request. If the test request specifies that the vehicles comprising the batch sample must be selected randomly, the random selection will be achieved by sequentially numbering all of the vehicles in the batch and then using a table of random numbers to select the number of vehicles as specified in paragraph (c) of this section based on the batch size designated by the Ad-

ministrator in the test request. An alternative random selection plan may be used by a manufacturer: *Provided*, That such a plan is approved by the Administrator. If the test request does not specify that test vehicles must be randomly selected, the manufacturer shall select test vehicles consecutively.

(1) Should a situation arise in which the configuration to be tested consists of only vehicles with automatic transmissions, they shall be tested in accordance with § 205.54-1(c)(2).

(2) If the configuration to be tested consists of both automatic transmission and standard transmission vehicles, the test vehicle shall be a standard transmission vehicle unless the manufacturer has reason to believe that the automatic transmission vehicle emits a greater sound level.

(b) The Acceptable Quality Level is 10 percent. The appropriate sampling plans associated with the designated AQL are contained in Appendix I, Table II.

(c) The appropriate batch sample size will be determined by reference to Appendix I, Table I and II. A code letter is obtained from Table I based on the batch size designated by the Administrator in a test request. The batch sample size will be obtained from Table II. The batch sample size will be equal to the maximum cumulative sample size for the appropriate code letter obtained from Table I plus an additional 10 percent rounded off to the next highest number.

(d) If the test request specifies that vehicles comprising the batch sample must be selected randomly, individual vehicles comprising the test sample will be randomly selected from the batch sample using the same random selection plan as in paragraph (a) of this section. Test sample size will be determined by entering Table II.

(e) The test vehicle of the category, configuration or subgroup thereof selected for testing shall have been assembled by the manufacturer for distribution in commerce using the manufacturer's normal production process in accordance with § 205.55-5(a).

(f) Unless otherwise indicated in the test request, the manufacturer will select the batch sample from the production batch, next scheduled after receipt